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# Liability under the Minnesota Civil Damage Act

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# Liability Under the Minnesota Civil Damage Act

*Wherever injury to property, person or means of support is caused by the intoxication of any person the question whether the Minnesota Civil Damage Act provides a forum for recovery of the loss is raised. The author of this Note analyzes the various state civil damage acts and the decisions interpreting them in an effort to clarify existing Minnesota law and to suggest solutions to problems which the Minnesota Supreme Court has not considered. He concludes that either statutory or interpretive changes are necessary if decisions consistent with the purposes underlying the dramshop legislation are to be reached in all CDA actions.*

## INTRODUCTION

### A. BACKGROUND

The national temperance movement achieved its ultimate objective with the ratification of the eighteenth amendment to the Constitution in 1919,<sup>1</sup> which prohibited the sale of intoxicating liquor. However, prior to the ratification of the eighteenth amendment temperance forces were effecting state laws, popularly known as "dramshop acts," designed to express their displeasure toward liquor traffic and to "provide against the evils . . . of intoxicating liquors."<sup>2</sup> These laws imposed civil liability upon the seller of intoxicating liquor for all injury resulting from his sale. Temperance forces consider dramshop legislation essential to the control

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1. U.S. CONST. amend. XVIII reads as follows:

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress. [Adopted 1919].

2. See Ogilvie, *History and Appraisal of the Illinois Dram Shop Act*, 1958 U. ILL. L.F. 175, 176-77.

of commercial liquor traffic because the common law does not provide a similar remedy.<sup>3</sup> The first legislation of this character was enacted by Maine in 1851, and since that time the number of states enacting dramshop legislation has greatly increased.<sup>4</sup> In 1911, Minnesota enacted legislation similar to the Maine statute.<sup>5</sup> The present Minnesota dramshop statute—the Civil Damage Act (CDA)—is substantially the same as the 1911 legislation. It reads as follows:

Every husband, wife, child, parent, guardian, employer, or other person who is injured in person or property, or means of support, by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling, bartering or giving intoxicating liquors, caused the intoxication of such person, for all damages, sustained; and all damages recovered by a minor under this section shall be paid either to such minor or to his parent, guardian, or next friend, as the court directs; and all suits for damages under this section shall be by civil action in any court of this state having jurisdiction thereof.<sup>6</sup>

## B. THE NATURE OF THE CIVIL DAMAGE ACT

Many problems of statutory interpretation have arisen in connection with dramshop legislation, and the courts have often looked to the purposes of the various acts in resolving the question before them. It is generally agreed that the express purposes of the several dramshop acts are to protect the health, safety, and welfare of the public through careful regulation of the distribution of liquor, to penalize the individual who sold the liquor in violation of the statute, and to compensate any person injured as a result of that sale of liquor.<sup>7</sup> The courts, however, are not agreed on the primary nature of dramshop acts. If civil damage legislation is primarily penal the courts will presume that the complete legislative intent is made manifest by the words of the statute<sup>8</sup> and will

3. See *Beck v. Groe*, 245 Minn. 28, 33-34, 70 N.W.2d 886, 891 (1955); *Cahn*, *New Common Law Dramshop Rule*, 9 CLEV.-MAR. L. REV. 302 (1960); *Moran*, *Theories of Liability*, 1958 U. ILL. L.F. 191, 192; *Note*, *Common Law Liability of Liquor Vendors*, 12 BAYLOR L. REV. 388 (1960). However, a common-law remedy does exist in behalf of the injured party against the intoxicated person, if the negligence of the intoxicated party caused the injury.

4. Twenty-two states now have such laws. See *Ogilvie*, *supra* note 2, at 180 n.30.

5. For an excellent summary of the history of the Minnesota Civil Damage Act, see *Village of Broton v. Cudahy Packing Co.*, 291 F.2d 284 (8th Cir. 1961).

6. MINN. STAT. § 340.95 (1957).

7. See, e.g., ILL. REV. STAT. ch. 43, § 94 (1955); *Adamson v. Dougherty*, 248 Minn. 535, 540-42, 81 N.W.2d 110, 114-15 (1957).

8. See *Eldridge v. Don Beachcomber, Inc.*, 342 Ill. App. 151, 95 N.E.2d

subject the act to a rigid construction. One effect of a strict construction would be to put the burden on the plaintiff to bring himself clearly within the precise wording of the statute,<sup>9</sup> thus reducing the possibility of recovery. However, if the CDA is found to be compensatory in nature the courts will construe the statute liberally to achieve the governing remedial objectives.<sup>10</sup>

The Minnesota Supreme Court's attempt to determine the nature of the Minnesota CDA has been complicated by the fact that other jurisdictions with similar statutes have expressed divergent views as to the nature of dramshop legislation.<sup>11</sup> Early dictum of

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512 (1950); Note, *Conflicts of Law Problems and the Extraterritorial Operation of the Illinois Dram Shop Act*, 1958 U. ILL. L.F. 287, 293.

9. See, e.g., *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 364 n.3, 91 N.W.2d 794, 807 n.3 (1958).

10. See, e.g., *Hahn v. City of Ortonville*, 238 Minn. 428, 436, 57 N.W.2d 254, 261 (1953).

11. The Illinois equivalent of the Minnesota CDA, for example, is part of the Illinois Liquor Control Act, and reads as follows:

Every person, who shall be injured, in person or property by any intoxicated person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving alcoholic liquor, have caused the intoxication, in whole or in part, of such person; and any person owning, renting, leasing or permitting the occupation of any building or premises, and having knowledge that alcoholic liquors are to be sold therein, or who having leased the same for other purposes, shall knowingly permit therein the sale of any alcoholic liquors that have caused, in whole or in part, the intoxication of any person, shall be liable, severally or jointly, with the person or persons selling or giving liquors aforesaid, as hereinafter provided; and a married woman shall have the same right to bring suit and to control the same and the amount recovered as feme sole; and all damages recovered by a minor under this Act shall be paid either to such minor, or to his or her parent, guardian or next friend as the court shall direct; and the unlawful sale, or giving away, of alcoholic liquor, shall work a forfeiture of all rights of the lessee or tenant, under any lease or contract of rent upon the premises where such unlawful sale or giving away shall take place; and all suits for damages under this Act may be by any appropriate action in any of the courts of this State having competent jurisdiction. An action shall lie for injuries to means of support, caused by an intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, resulting as aforesaid. Such action shall be brought by and in the name of the person injured or the personal representative of the deceased person, as the case may be, from whom said support was furnished, and the amount recovered in every such action shall be for the exclusive benefit of the person or persons injured in loss of support, and shall be distributed to such persons in the proportions determined by the judgment or verdict rendered in said action. If such right of action is settled by agreement with the personal representative of a deceased person from whom support was furnished, the court having jurisdiction of the estate of such deceased person shall distribute the amount of the settlement to the person or persons injured in loss of support in the proportion, as determined by the Court, that the percentage of dependency of each such person upon the deceased person

the court in *Mayes v. Byers*<sup>12</sup> distinguished the Minnesota CDA from Minnesota Statute section 340.12—a statute imposing a penalty on any liquor licensee for damages resulting from a violation of the liquor laws<sup>13</sup>—on the ground that the CDA did not mani-

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bears to the sum of the percentages of dependency of all such persons upon the deceased person. Recovery under this Act for injury to the person or to the property of any person as aforesaid, shall not exceed \$15,000, and recovery under this Act for loss of means of support resulting from the death or injury of any person, as aforesaid shall not exceed \$15,000 for each person so injured where such injury occurred prior to the effective date of this amendatory Act of 1955, and not exceeding \$20,000 for each person so injured after the effective date of this amendatory act; provided that every action hereunder shall be barred unless commenced within one year next after the cause of action accrued.

ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1960).

The Illinois statute, originally characterized as penal in nature, *Burtin v. Hutton*, 206 Ill. App. 194, 199 (1917), has subsequently been termed both penal and remedial. *Eldridge v. Don Beachcomber, Inc.*, 342 Ill. App. 151, 154, 95 N.E.2d 512, 514 (1950); *Hyba v. C. A. Horneman, Inc.*, 302 Ill. App. 143, 146, 23 N.E.2d 564, 565 (1939).

The New York version of the Minnesota CDA, not a part of the New York Alcoholic Beverage Control Law, was enacted as a Civil Rights Law. It reads as follows:

Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication; and in any such action such person shall have a right to recover actual and exemplary damages. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such action may be brought in any court of competent jurisdiction. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

N.Y. CIV. RIGHTS LAW § 16.

The Connecticut Superior Court, in construing this New York statute, held that it was not penal "in the international sense," and that the remedial objectives of the act should govern the scope of its enforcement. *Osborn v. Borchetta*, 20 Conn. Supp. 163, 167, 129 A.2d 238, 240 (Super. Ct. 1956).

The Minnesota CDA is similar to the Illinois equivalent in that it is also part of the general liquor control law. Unlike the Illinois statute, however, the Minnesota CDA contains an "illegal" transfer requirement. On the other hand, the Minnesota CDA is similar to the New York counterpart in that both statutes grant a cause of action to the same potential plaintiffs. However, the Minnesota CDA, unlike the New York statute, does not provide for recovery of exemplary damages, survival of a CDA cause of action in the event of the death of a party, or recovery for injury other than damage to person, property or means of support.

12. 214 Minn. 54, 7 N.W.2d 403 (1943).

13. MINN. STAT. § 340.12 (1957).

fest a legislative intent to impose penal liability.<sup>14</sup> Subsequently, in *Hahn v. City of Ortonville*,<sup>15</sup> the court recognized the penal nature of the CDA, but nevertheless recommended the statute be liberally construed in order to suppress the mischief and advance the remedy.<sup>16</sup> In *Beck v. Groe*,<sup>17</sup> however, the court ignored the distinction expressed in *Mayes v. Byers* and interpreted the *Mayes* case as holding that liability created under any liquor license law is a means of imposing a penalty on liquor dealers.<sup>18</sup> In *Adamson v. Dougherty*,<sup>19</sup> the court, apparently realizing that the construction of the Minnesota CDA in *Beck* was erroneous, addressed itself to the specific issue of whether the CDA was penal or remedial in nature, and concluded that the language in the *Beck* opinion was not used to determine that the CDA was other than compensatory in nature.<sup>20</sup> Later, in *Schmidt v. Driscoll Hotel, Inc.*, the court reiterated that a construction of the CDA which would allow the plaintiff to be compensated would be more in conformity with principles of equity and justice.<sup>22</sup> More realistically, it has been suggested that the inconsistency in characterizing the CDA is more apparent than real, and has been due to the nature of the issue before the court.<sup>23</sup> For example, in the *Beck* case, a strict construction of the CDA was used to defeat the contention that negligence on the part of the plaintiff should operate to preclude a CDA action.<sup>24</sup> In *Schmidt*, the court allowed the plaintiff, who had been injured in another state as the result of an illegal sale of liquor in Minnesota, to recover under the Minnesota CDA even though the language of the CDA does not expressly provide that the act has extraterritorial effect.<sup>25</sup> The court has apparently regarded the act

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14. 214 Minn. at 63, 7 N.W.2d at 407. Arguably, there is nothing in the language of the Act to require that it be construed as a penal provision. Furthermore, a means of imposing liability on dealers as a penalty for illegally selling liquor already exists apart from the Civil Damage Act [340.12]. . . . In view of this it seems unlikely that the Civil Damage Act was also intended to be a penalty.

42 MINN. L. REV. 145, 147 (1957).

15. 238 Minn. 428, 57 N.W.2d 254 (1953).

16. *Id.* at 436, 57 N.W.2d at 261.

17. 245 Minn. 28, 70 N.W.2d 886 (1955).

18. *Id.* at 35-36, 70 N.W.2d at 892.

19. 248 Minn. 535, 81 N.W.2d 110 (1957).

20. *Id.* at 540-42, 81 N.W.2d at 114-15.

21. 249 Minn. 376, 82 N.W.2d 365 (1957).

22. *Id.* at 380, 82 N.W.2d at 368.

23. *Village of Broton v. Cudahy Packing Co.*, 291 F.2d 284, 292 (8th Cir. 1961).

24. 245 Minn. at 35-36, 70 N.W.2d at 892.

25. 249 Minn. 376, 380-81, 82 N.W.2d 365, 368 (1957). See also text accompanying note 7 *supra*.

as essentially remedial despite its penal characteristics, and has been willing to construe the CDA strictly or liberally, as the case may be, to allow the plaintiff to recover. Nonetheless, the conclusion recently reached by the Court of Appeals of the Eighth Circuit that the ultimate *purpose* of the Minnesota CDA is a dual one—to suppress the mischief and advance the remedy<sup>26</sup>—is a proper determination.

The purpose of this Note is to examine and clarify the law applicable in Minnesota civil damage actions. This will be accomplished through an examination of the various dramshop acts and decisions interpreting them. Particular consideration will be given to the objectives underlying dramshop legislation where the problem discussed is unsettled. The author of this Note will discuss a variety of selected problems frequently recurring in CDA litigation. However, the question whether the CDA should be given extraterritorial effect will not be considered. Similarly, the concomitant problems posed by the initiation of CDA litigation subsequent to judgment in a negligence action for the same injury are beyond the scope of this Note.

## I. PARTIES

### A. PLAINTIFFS

#### 1. *Construction of the statutory term "other person"*

The Minnesota CDA permits an action to be brought by "every husband, wife, child, parent, guardian, employer or other person" who suffers the requisite injury;<sup>27</sup> however, the Minnesota Supreme Court has not determined who is a proper plaintiff within the meaning of the statutory term "other person." Minnesota statute section 645.08 (3) provides that the rule of *ejusdem generis* is to be followed in construing Minnesota statutes except where it would be "inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute. . . ."<sup>28</sup> This rule provides that where general words follow an enumeration of persons or things stated in words of a particular and specific meaning, such general words are not to be construed to their greatest extent, but are to be regarded as referring only to persons or things

26. *Village of Brooten v. Cudahy Packing Co.*, 291 F.2d 284, 293 (8th Cir. 1961).

27. See text accompanying note 6 *supra*.

28. MINN. STAT. § 645.08 (1957). For an argument that this rule should not be inexorably applied, see *Village of Brooten v. Cudahy Packing Co.*, 291 F.2d 284, 298 (8th Cir. 1961). For a discussion of the rule's application in another context, see 45 MINN. L. REV. 137, 146-48 (1960).

of the same general class as those specifically mentioned.<sup>29</sup> The practical effect of applying this rule to the statutory term "other person" is to impede the operation of the statute by restricting the category of eligible plaintiffs in CDA actions to those specifically enumerated in the CDA. The legislatures of other jurisdictions have apparently recognized that this effect is undesirable and have replaced the statutory list of eligible plaintiffs and the "other person" phrase with the term "every person."<sup>30</sup> Hence, the rule of *ejusdem generis* is not applicable. In Minnesota, however, the legislative intent is indeterminable. Thus, the essential question to be resolved in determining who is an "other person" is whether the party bringing the suit *should*, in light of the purposes of the act, be allowed to maintain an action under the CDA. The court has adopted a liberal construction of the term "person" with respect to who may be a CDA *defendant*, and has permitted a CDA suit against a corporation,<sup>31</sup> a municipality,<sup>32</sup> and a non-profit organization.<sup>33</sup> Since the court has taken this liberal approach to effectuate the objectives of the act, the court should similarly construe the phrase "other person" to effectuate the compensatory objectives of the act by extending the class of potential plaintiffs beyond those specifically enumerated.<sup>34</sup> However, to eliminate the possibility of a narrow construction based on section 645.08(3), the legislature should amend the CDA by providing that "every person" who suffers the requisite injury shall have a cause of action under the CDA.<sup>35</sup>

An issue of increasing importance in this area is whether an insurance company is a proper party plaintiff under the CDA. Generally, this question has arisen where the insured has no CDA cause of action and the insurance company seeks to recover under the CDA in its own right. In *Village of Brooten v. Cudahy Packing Co.*,<sup>36</sup> the defendant illegally sold intoxicating liquor to *I*, an employee of *C*. While intoxicated and as a result of the defendant's

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29. BLACK, LAW DICTIONARY 608 (4th ed. 1951).

30. ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1960). See note 11 *supra*.

31. See *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957).

32. See *Randall v. Village of Excelsior*, 258 Minn. 81, 103 N.W.2d 131 (1960).

33. See *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 91 N.W.2d 794 (1958).

34. *Contra*, Voelker, *Parties to Dram Shop Actions*, 1958 U. ILL. L.F. 207, 210-11.

35. This amendment would not, of course, eliminate the problem of who should be a "person" under the CDA. See MINN. STAT. § 645.447 (1957).

36. 291 F.2d 284 (8th Cir. 1961).



illegal sale, *I* drove his automobile into an automobile driven by *P*. *P* brought a negligence action against *I* and *I*'s employer, *C*. Then the insurance company, as the ultimate insurer of *I* and *C*, settled *P*'s claim. Thereafter, the insurance company commenced a CDA action in its own right against the defendant-seller to recover the net amount it had paid to *P*. The Eighth Circuit Court of Appeals held that the trial court's determination that the insurance company could recover in *its own right* was reasonable since the action was not precluded by the express language of the Minnesota statute,<sup>37</sup> and the court was "aware . . . of no substantial policy argument against [this] . . . result."<sup>38</sup>

In *Economy Auto Ins. Co. v. Brown*,<sup>39</sup> the Illinois Appellate Court held that to permit the insurer of the intoxicated person to recover in its own right in this situation

would be to impose liability under this statute in every case where a person or corporation had a contract with an individual who became intoxicated, and by reason thereof, caused the person or corporation to sustain a loss under the contract. Not only would this result produce a flood of spurious litigation, but it would unwarrantably shift the burden of economic loss upon the dram shop keepers, and pervert the avowed purpose of the statute.<sup>40</sup>

The court in *Brooten*, however, stated that this argument had lost much of its force, because tavern operators are now routinely covered by insurance and the burden of economic loss would not therefore be shifted to the tavern owner but rather to his insur-

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37. *Id.* at 299, 301.

38. *Id.* at 301. Apart from the question whether an insurance company qualifies as an "other person" plaintiff under the CDA, the right of an insurance company to maintain a CDA action has been challenged on the ground that the payment of claims was a pecuniary loss rather than an injury to tangible property as contemplated by the CDA. See *Eager v. Nathan*, 14 Ill. App. 2d 418, 423, 144 N.E.2d 629, 632 (1957); *Howlett v. Doglio*, 402 Ill. 311, 317, 83 N.E.2d 708, 712 (1949). The right of an insurance company to maintain a CDA action has also been challenged on the ground that whatever loss was sustained by the insurance company was proximately caused by its own insurance policy, rather than by or in consequence of the intoxication, which was at best a remote cause. *Economy Auto Ins. Co. v. Brown*, 334 Ill. App. 579, 79 N.E.2d 854 (1948). Later cases, however, have established that a pecuniary loss is a "property" loss within the meaning of the CDA. See *Dworak v. Tempel*, 18 Ill. App. 2d 225, 152 N.E.2d 197 (1958); *Iszler v. Jorda*, 80 N.W.2d 665 (N.D. 1957). For a discussion of the proximate cause issue see *Village of Brooten v. Cudahy Packing Co.*, 291 F.2d 284 (8th Cir. 1961); *Economy Auto Ins. Co. v. Brown*, *supra*; *Dworak v. Tempel*, *supra*. See text accompanying notes 131-52 *infra*, for a general discussion of the proximate cause concept in CDA actions.

39. 334 Ill. App. 579, 79 N.E.2d 854 (1948).

40. *Id.* at 589, 79 N.E.2d at 858.

er.<sup>41</sup> However, the mere fact that liquor dealers are now commonly covered by insurance is not a persuasive argument that the insurer of the intoxicated party should be allowed to shift the economic burden to the insurer of the liquor dealer by means of CDA action. The reasoning in *Economy Auto Ins. Co.* is even more forceful in this instance. The shifting of business risks from one insurer to another is more inconsistent with the purposes of the CDA than is the shifting of the burden of the loss from one insurer to the liquor dealer himself.

Inasmuch as liquor dealers are ordinarily insured, the argument may be made that an "indirect discipline"—the fear of losing insurance or of prohibitive premiums—must be rigorously administered in order to effectively restrict illegal liquor sales.<sup>42</sup> However, policy considerations of equal gravity dictate that the imposition of the same type of "indirect discipline" on the intoxicated party should be encouraged. Fear of uninsurability or prohibitive premiums should operate to deter persons from becoming intoxicated and injuring third parties. But the enforcement of "indirect discipline," whether against the intoxicated party or the liquor dealer can initially be effected only by the party originally injured. When the injured party has made an election to claim against either the intoxicate or the liquor dealer, and has obtained a judgment for the full amount of his injury, he neither has the ability to claim against the other nor the ability to impose the burden of loss on the other's insurer. Thus, because equal policy considerations require the imposition of indirect discipline on either party, and since the initial choice of imposing a claim which enforces the indirect discipline rests *solely* with the originally injured party, his choice should be determinative of the final result. The court should not shift the burden of loss from the insurer of one wrongdoer—the intoxicated, negligent driver—to the insurer of another wrongdoer—the illegal seller of liquor—merely at the request of the first insurer. Moreover, the plaintiff-insurer should not be allowed to recover in its own right where its insured has no CDA cause of action. Clearly, there is no reason to place the plaintiff-insurer in a better position than that occupied by its insured. The insurer's liability arises solely out of its voluntary assumption of liability—a risk it is fully compensated for through insurance premiums.<sup>43</sup>

41. *Village of Broton v. Cudahy Packing Co.*, 291 F.2d 284, 297 (8th Cir. 1961).

42. See *Dworak v. Tempel*, 17 Ill. 2d 181, 191-92, 161 N.E.2d 258, 264 (1959).

43. Several aspects of dramshop liability insurance are discussed by Bliss, *Enforcement of Judgments*, 1958 U. ILL. L.F. 273, 279.

On the other hand, these policy-grounded arguments are inapplicable where the assured has a CDA cause of action and the insurer seeks to recover as subrogee of the rights of its insured.<sup>44</sup> Insurance companies should be allowed to recover under the CDA only where the right of subrogation exists.

## 2. Construction of the statutory term "in his own name"

The Minnesota CDA provides that the plaintiff must bring the action "in his own name."<sup>45</sup> Apparently, this language is designed to eliminate the possibility of separate CDA actions by different individuals for the same injury—one for injury to person by the individual who has sustained the physical injury, and a second for loss of means of support by his dependents.<sup>46</sup> Pursuant to this language, in *Beck v. Groe*, the Minnesota Supreme Court held that an action by a trustee as the personal representative of a decedent could not be maintained under the CDA.<sup>47</sup> This result may be justified on the ground that the wife and other dependents of the decedent may bring a CDA action for loss of means of support. On the other hand, the court has not questioned the initiation of a representative suit under the CDA by the *guardian ad litem* of a minor<sup>48</sup> possibly on the ground that a guardian is specifically listed as an eligible plaintiff, and the payment of a judgment recovered by a minor to his guardian is specifically provided for in the CDA. At least one writer has suggested that, in light of the compensatory nature of the act, the representative of a deceased person should not be allowed to maintain a CDA action. Upon closer analysis, however, there appears to be little reason to allow an injured person to bring a CDA suit for recovery of medical expenses or property damage while precluding a similar CDA action by a decedent's estate. Where recovery is sought solely for this type of damage—unlike the *Beck* case—no CDA cause of action exists whereby the decedent's dependents can recover for the loss. Inasmuch as the principle of financial compensation seemingly applies in both instances, the CDA should provide for the recovery of medical expenses and property damage by a decedent's estate. Moreover, the penal and regulatory objectives of the CDA are promoted if recovery is allowed for this loss. Because the language of the CDA as it now exists compels a contrary result, the legisla-

44. See *Dworak v. Tempel*, 18 Ill. App. 2d 225, 152 N.E.2d 197 (1958).

45. See text accompanying note 6 *supra*.

46. Appleman, *Pleading, Evidence, and Procedure under the Dram Shop Act*, 1958 U. ILL. L.F. 219, 220.

47. See *Beck v. Groe*, 245 Minn. 28, 70 N.W.2d 886 (1955); cf. *Sworski v. Colman*, 204 Minn. 474, 283 N.W. 778 (1939).

48. *E.g.*, *Adamson v. Dougherty*, 248 Minn. 535, 81 N.W.2d 110 (1957).

ture should amend the statute by replacing the relevant clause—"in his own name"—with the following sentence: "In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator."<sup>49</sup>

3. *Effect of plaintiff's connection to the intoxication or the injury*

(a) If plaintiff is the intoxicated person

One writer has suggested that the courts have required that plaintiff be entirely free of any connection with activities leading to the intoxication.<sup>50</sup> On the other hand, that same authority has stated that an intoxicated person should be allowed to bring a CDA action for injuries resulting to himself.<sup>51</sup> Although this assertion was unsupported, it is apparently based on the theory that the objectives of the CDA should be fully effectuated regardless of the fact that the plaintiff was also the intoxicated person. The literal language of the Minnesota statute does not prohibit a person from recovery because of his own conduct.<sup>52</sup> However, the Minnesota Supreme Court has recently held that the plaintiff's voluntary intoxication will preclude his recovery in a CDA action.<sup>53</sup> This result seems sound, since a contrary decision would tend to promote irresponsibility on the part of the intoxicated person by allowing his recovery for every expense or injury which is a natural concomitant of his intoxication.<sup>54</sup> Therefore, it is apparent that in this instance the practical realities should outweigh the result dictated by a literal interpretation of the CDA, and an intoxicated person should not be allowed to recover for his own injuries.

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49. N. Y. CIV. RIGHTS LAW § 16.

50. Voelker, *supra* note 34, at 209. For example, the theory of "contribution," discussed *infra*, has been used to preclude a plaintiff from recovery even if he merely accompanied the intoxicated person during the period of his intoxication. See Meier v. Pocius, 17 Ill. App. 2d 332, 150 N.E.2d 215 (1958).

51. Voelker, *supra* note 34, at 209.

52. See text accompanying note 6 *supra*.

53. Randall v. Village of Excelsior, 258 Minn. 81, 103 N.W.2d 131 (1960); Cavin v. Smith, 228 Minn. 322, 37 N.W.2d 368 (1949). In the latter case, a plaintiff who became intoxicated and was unable to defend himself against an assault by a third person was denied recovery against the vendor of the intoxicating liquor. In both cases the illegal sale of the liquor was to a minor, but a similar result should be anticipated when the sale is to an obviously intoxicated person. See Scatorchia v. Caputo, 263 App. Div. 304, 32 N.Y.S.2d 532 (1942).

54. See Noonan v. Galick, 19 Conn. Supp. 308, 311, 112 A.2d 892, 894 (Super. Ct. 1955).

- (b) If plaintiff "contributes" to the intoxication of the person causing the injury

The plaintiff may "contribute" to the intoxication by purchasing liquor for or by serving liquor to the intoxicated person. The CDA does not expressly bar nor expressly provide a cause of action in favor of a plaintiff who contributes to the intoxication in this manner. However, courts in other jurisdictions, where the defendant may be liable if he "contributes" liquor at *any* stage of the intoxication, have not permitted a plaintiff to maintain a CDA action if he contributed liquor at any stage of the intoxication.<sup>55</sup> The reason for preventing recovery in this instance is that the plaintiff should not be allowed to profit where he has contributed to the injury.<sup>56</sup> The plaintiff is precluded from recovery where his act is the same as that which would be sufficient to impose CDA liability on a defendant.

The Minnesota Supreme Court has never decided what degree of contribution will bar a person from recovery under the CDA. Nonetheless, in *Mayer v. Byers*,<sup>57</sup> the court stated by way of dictum that there is an absence of a legislative intent in the CDA to protect the beneficiaries of the statute if those beneficiaries contributed to the intoxication of the person causing the injury.<sup>58</sup> A literal interpretation of this dictum would necessitate a result identical to that reached in other jurisdictions. Thus, recovery by a plaintiff who furnished liquor to the intoxicated *at any stage of his intoxication* would be barred. In Minnesota, however, the act of furnishing liquor to an *adult* individual prior to his intoxication is not sufficient to create CDA liability. The Minnesota CDA imposes liability on an individual if he furnishes liquor to an "obviously intoxicated" person.<sup>59</sup> Therefore, the result suggested by the *Mayer* dictum is not consonant with the rationale of other jurisdictions. To fully effectuate the policy objectives of the Minnesota CDA, a plaintiff who contributes to the intoxication of an individual should be precluded from recovery for injuries caused by that individual *only* where the plaintiff's contribution is sufficient to create liability under the Minnesota CDA.<sup>60</sup>

55. See, e.g., *Swan v. Dilonardo*, 5 Ill. App. 2d 233, 124 N.E.2d 549 (1955).

56. See Note, *The Illinois Dram Shop Act: Recent Developments and Alternative Solutions*, 51 NW. U.L. REV. 775, 785-86 (1957).

57. 214 Minn. 54, 7 N.W.2d 403 (1943).

58. *Id.* at 63, 7 N.W.2d at 407.

59. See text accompanying notes 89-97 *infra*.

60. The result of this construction would be to preclude a plaintiff from bringing a CDA action *only* if he furnished intoxicating liquor to a minor, a person of Indian blood, who has not adopted the language, customs and

(c) If plaintiff's negligence is a cause of the injury

The Minnesota Supreme Court has determined that negligent conduct on the part of the plaintiff will not bar his recovery under the CDA.<sup>61</sup> The court apparently based this decision on the ground that an opposite result was not contemplated by the legislature since the language of the statute does not provide for this defense. The CDA provides a statutory remedy in derogation of the common law<sup>62</sup> and it is therefore unnecessary for the plaintiff to prove negligence on the part of the intoxicated person.<sup>63</sup> Similarly, the plaintiff's own negligence should be irrelevant in determining liability under the CDA. Moreover, if the defense of contributory negligence were made available in CDA actions the penal and regulatory objectives of the act would be thwarted. The Minnesota result, therefore, appears to be sound.

B. DEFENDANTS

1. *Original and Joined Defendants*

The Minnesota CDA provides that liability is to be imposed upon any "person" who violates the statute.<sup>64</sup> Pursuant to this language the Minnesota Supreme Court has held that the operator of a liquor establishment,<sup>65</sup> whether a corporation,<sup>66</sup> a municipality,<sup>67</sup> or a non-profit organization,<sup>68</sup> may be made the original defendant in a CDA action. It has also been recognized that the surety of a liquor dealer may be joined as a defendant under the CDA.<sup>69</sup> As a practical matter, the surety should be joined since it

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habits of civilization, any public prostitute, or an obviously intoxicated person. See MINN. STAT. §§ 340.14, 340.73 (1957). The plaintiff would not be precluded if he furnished liquor to an adult who was not obviously intoxicated at the time plaintiff transferred the liquor to him.

61. See *Beck v. Groe*, 245 Minn. 28, 35, 70 N.W.2d 886, 892 (1955); *Mayes v. Byers*, 214 Minn. 54, 7 N.W.2d 403 (1943).

62. See *Ogilvie*, *supra* note 2.

63. See *Beck v. Groe*, 245 Minn. 28, 45, 70 N.W.2d 886, 897 (1955); *Hahn v. City of Ortonville*, 238 Minn. 428, 433, 57 N.W.2d 254, 259 (1953).

64. See text accompanying note 6 *supra*. See also MINN. STAT. § 645.44 (7) (1957).

65. See, e.g., *Adamson v. Dougherty*, 248 Minn. 535, 81 N.W.2d 110 (1957).

66. See *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Beck v. Groe*, 245 Minn. 28, 70 N.W.2d 886 (1955).

67. See *Randall v. Village of Excelsior*, 258 Minn. 81, 103 N.W.2d 131 (1960).

68. See *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 91 N.W.2d 794 (1958).

69. See *Best v. Fedo*, 153 F. Supp. 79 (D. Minn. 1957); *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 91 N.W.2d 794 (1958).

will be liable to the extent of the bond for any damages recovered from the liquor dealer. Other jurisdictions have allowed recovery against the bartender<sup>70</sup> who sold liquor to the intoxicated, and have provided by statute for recovery against the owner of leased premises where the lease was executed with the knowledge that the lessee intended to operate a commercial liquor establishment.<sup>71</sup> These specific issues arising in foreign jurisdictions have not been ruled on by the Minnesota Supreme Court.

A difficult problem may arise where the plaintiff brings an action against only one of several possible CDA defendants. Where several liquor dealers may have illegally sold liquor to a person who subsequently causes injury, the Minnesota Supreme Court recognizes that the plaintiff may join all of the liquor dealers as defendants in a single CDA<sup>72</sup> action or may select any one of them as the sole defendant.<sup>73</sup> The critical question which has not been considered in Minnesota is whether a person who has been selected as the sole defendant may implead other liquor distributors who may have illegally furnished liquor to the person causing the damage, but who were not initially joined as defendants by the plaintiff. Under Rule 14 of the Minnesota Rules of Civil Procedure the defendant may implead a person not a party to the action if that person is or may be liable to the defendant for all or part of the plaintiff's claim against him.<sup>74</sup> The only principle under which a non-party liquor dealer may be liable to the defendant-liquor dealer is the principle of contribution.<sup>75</sup> Contribution is generally allowed where two or more persons are bound to pay a sum of money and one or more pays more than his share, thereby relieving the others from their liability. Those paying may recover from those not paying the aliquot portion which the latter ought to pay.<sup>76</sup> However, the Minnesota Supreme Court has held that the *intentional* violation of a statute by an individual will bar his right of contribution against others who may also have been liable to the plaintiff.<sup>77</sup> Since the defendant's act of furnishing liquor

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70. See *Osborn v. Leuffgen*, 381 Ill. 295, 45 N.E.2d 622 (1942).

71. See statutes cited note 11 *supra*.

72. See, e.g., *Best v. Fedo*, 153 F. Supp. 79 (D. Minn. 1957); *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 91 N.W.2d 794 (1958).

73. See *Strand v. Village of Watson*, 245 Minn. 414, 72 N.W.2d 609 (1955).

74. MINN. R. CIV. P. 14.01.

75. See *American Automobile Ins. Co. v. Molling*, 239 Minn. 74, 76-83, 57 N.W.2d 847, 849-53 (1953).

76. *Ibid.*

77. *Kemerer v. State Farm Mutual Auto Ins. Co.*, 211 Minn. 249, 300 N.W. 793 (1941); cf. *Ankeny v. Moffett*, 37 Minn. 109, 33 N.W. 320 (1887). However, in Minnesota, contribution is allowed between concur-

to an obviously intoxicated individual often constitutes an intentional violation of the CDA, the defendant's right of contribution against another who has also illegally furnished liquor to the same purchaser may be barred.

The CDA does not expressly provide a cause of action in favor of one defendant against other possible defendants. Apparently, the legislature recognized that to permit a defendant to recover contribution would, to some extent, defeat the penal objectives of the act, since the defendant could thereby reduce the amount of the "penalty" which he otherwise must pay. Where two or more persons may be liable for the injury it is likely that the one who has most flagrantly violated the statute will be selected as the defendant where the two are not initially joined in a single action.<sup>78</sup> Thus, a liquor dealer who served the intoxicate only one drink may avoid liability. Since it is often doubtful that the intoxication was apparent at the time of the sale this result is acceptable. However, where the "defendants'" violations are equally culpable it is questionable whether the imposition of a larger "penalty" on one of the defendants furthers the objectives of the act to the greatest extent.

## 2. *Liability under the CDA of a person not engaged in commercial liquor traffic*

In the early case of *Cruse v. Aden*,<sup>79</sup> the Illinois Appellate Court determined that a defendant must be engaged in liquor traffic for profit to be liable under the Illinois equivalent of the Minnesota CDA. The court pointed out that while the express language of the Illinois CDA did not limit its application to those engaged in commercial liquor traffic, the various provisions of the general liquor control act containing the CDA were aimed at controlling only commercial liquor traffic.<sup>80</sup> The court also noted that the statute was of a highly penal nature,<sup>81</sup> and concluded that a contrary result would be "unreasonable."<sup>82</sup> The Minnesota Su-

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rent tortfeasors. See *Duluth, M. & N. Ry. v. McCarthy*, 183 Minn. 414, 236 N.W. 766 (1931); *Underwriters at Lloyds v. Smith*, 166 Minn. 388, 208 N.W. 13 (1926). See generally PROSSER, TORTS 246-49 (2d ed. 1955).

78. This conclusion is based on the fact that all liquor dealers carry insurance; hence it is most likely that the prospective plaintiff will select his adverse party on the basis of the one against whom he has the strongest case, rather than the "wealthiest" defendant. See generally Bliss, *Enforcement of Judgments*, 1958 U. ILL. L.F. 273, 279-84.

79. 127 Ill. 231, 20 N.E. 73 (1889).

80. *Id.* at 236, 20 N.E. at 75.

81. *Id.* at 238, 20 N.E. at 76.

82. The court stated:

[I]t would render any person who, at his own table at his private



preme Court has not expressly concerned itself with this issue; nevertheless, the court has permitted a CDA action against a defendant who was not a commercial liquor dealer. In *Dahlin v. Kron*,<sup>83</sup> the plaintiff, the defendant, and *X* were members of a group which had been drinking during the evening. The plaintiff was injured when an automobile driven by *X* in which she was a passenger left the road and crashed. Plaintiff sued *X* on a negligence theory and the defendant under the CDA alleging that the defendant had caused *X*'s intoxication. The court upheld the finding of the trial court in favor of the defendant on the specific grounds that there was no evidence of *X*'s intoxication, that the defendant did not particularly urge *X* to drink the liquor, and that the defendant had not furnished the liquor since all of the boys had "chipped in" to purchase it.<sup>84</sup> The court did not, however, hold that the defendant was immune from liability in a CDA action because he was not a commercial liquor dealer. The absence of any discussion by the court concerning the capacity of the defendant to be sued under the CDA illustrates the apparent immateriality of the fact that the defendant had no connection with a commercial liquor establishment. However, this same fact robs the case of controlling authority on the question.

Since the Minnesota Supreme Court has determined that one of the primary purposes—if not *the* primary purpose—of the CDA is to compensate injured parties,<sup>85</sup> the *Dahlin* opinion may represent the better view. The plain wording of the Minnesota statute places liability on "*any person* who, by illegally selling, bartering, or *giving* intoxicating liquors . . ."<sup>86</sup> thereby causes injury. Arguably, the legislature intended that not only those who engage in liquor traffic for a profit, but also others who give liquor to an intoxicated person without any remuneration should be within the purview of the statute. Furthermore, the public interest in awarding compensation for injury resulting from intoxication exists whether the person causing the intoxication is a liquor dealer or a private individual. This construction would prevent discrimination against those whose acts of furnishing liquor would be considered

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residence, gave a glass of wine to a guest as an act of hospitality, liable to the fines and penalties imposed by section 2 of the act, without such person [having] a license to keep a dram-shop. It is unreasonable to suppose such result was contemplated.

*Id.* at 237, 20 N.E. at 76.

83. 232 Minn. 312, 45 N.W.2d 833 (1950).

84. *Id.* at 316-17, 45 N.W.2d at 836.

85. See, e.g., *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 357-58, 91 N.W.2d 794, 802-03 (1958).

86. MINN. STAT. § 340.95 (1957).

wrongdoing merely because it was done for a profit. Therefore, the argument can be advanced that responsibility under the CDA should rest on any person who illegally furnishes liquor to an intoxicated person. More compelling considerations, however, militate toward a determination in line with the Illinois approach. One argument in behalf of the *Cruse* decision is that it conforms to a legislatively espoused purpose of the Illinois act—to regulate the furnishing of liquor by persons engaged in *commercial* liquor traffic and thereby to protect the public from possible injury.<sup>87</sup> Under the Illinois statute, the burden of loss is placed solely on those who profit from furnishing intoxicating liquor. The justification for this “discrimination” is that the burden of loss is more readily borne by a liquor establishment than an individual. All liquor establishments acquire insurance to protect themselves from CDA liability, and the insurance premiums are treated as a cost of doing business.<sup>88</sup> In contrast, private individuals are less likely to protect themselves from CDA liability by means of insurance. The public also seems to be unaware that such legislation exists. In addition, the Illinois result is seemingly more in agreement with the penal characteristics of dramshop legislation. However, greater justification for applying the act to private persons can be found in Minnesota than Illinois since the Minnesota act imposes liability only where there is an *illegal* transfer.<sup>89</sup> Nevertheless, the application of the CDA to individuals not engaged in commercial liquor traffic is undesirable, and the implication of the *Dahlin* decision should not be followed.

## II. THE REQUIREMENT OF AN ILLEGAL TRANSFER

### A. WHAT CONSTITUTES AN ILLEGAL TRANSFER

The Minnesota CDA provides that a transfer of intoxicating liquor must be “illegal” if liability is to be imposed on the transferor for the injurious acts of the transferee.<sup>90</sup> Generally an illegal transfer is one contrary to federal,<sup>91</sup> state,<sup>92</sup> or local law.<sup>93</sup> It should be noted, however, that the Minnesota CDA does not define an “illegal” transfer, nor does it specify the particular statute which

87. See Price, *History and Purpose of the Illinois Dram Shop Act*, 1957 Ins. L.J. 740, 742.

88. For further observations of the insurance aspect of CDA liability, see Bliss, *Enforcement of Judgments*, 1958 U. ILL. L.F. 273, 279–84.

89. See text accompanying note 6 *supra*.

90. *Ibid.*

91. See *Benes v. Campion*, 186 Minn. 578, 244 N.W. 72 (1932).

92. *E.g.*, MINN. STAT. §§ 340.14(1), 340.73 (1957).

93. See *Mayes v. Byers*, 214 Minn. 54, 7 N.W.2d 403 (1943).

describes an illegal transfer for CDA purposes. But two Minnesota statutes proscribe the transfer of intoxicants to certain individuals. Minnesota Statute section 340.73 (the illegal sale statute) provides that it shall be unlawful for any person to furnish liquor to any minor or to any *intoxicated* person.<sup>94</sup> Whereas, section 340.14 (the hours of sale statute) provides that "no intoxicating liquor shall be sold or furnished for any purpose to any person under the age of 21 years or to any habitual drunkard or to any person *obviously intoxicated* or to any of the persons to whom sale is prohibited by statute or by reason of sale to whom a penalty is provided by statute."<sup>95</sup> Since it appears that a sale described in either statute is illegal, a sale should be "illegal" within the language of the CDA if made either to an "intoxicated" person under the illegal sale statute or to an "obviously intoxicated" person under the hours of sale statute. However, in *Strand v. Village of Watson*,<sup>96</sup> a CDA action, the Minnesota Supreme Court held that the "obviously intoxicated" provision of the hours of sale statute, which was enacted subsequent to the illegal sale statute, repealed by implication, at least for CDA purposes, that part of the illegal sale statute which prohibits sale to an "intoxicated" individual.<sup>97</sup> Therefore, under existing Minnesota case law, a transfer of intoxicants to a person who is merely "intoxicated" is not illegal for CDA purposes.<sup>98</sup>

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94. MINN. STAT. § 340.73 (1957).

95. MINN. STAT. § 340.14(1) (1957).

96. 245 Minn. 414, 72 N.W.2d 609 (1955).

97. The court stated

that the law was not completely repealed by implication is evident from the fact that the legislature has recognized the existence of this section, insofar as the illegal sale to Indians is concerned, by amending the same by L. 1947, c. 87. However, insofar as the two acts are inconsistent, the usual rule prevails that the act later in point of time must control. It follows that, in determining whether an illegal sale has been made, the language found in § 340.14 is controlling.

*Id.* at 420-21, 72 N.W.2d at 614-15. The last sentence of the quoted material appears to indicate that the sale of liquor is no longer illegal in Minnesota for any purpose. However, it is unlikely that the court intended this result. Section 340.73 is a criminal statute—a violation of this section constitutes a gross misdemeanor. This fact tends to negate the idea that its terms are repealed by implication by the inconsistent terms of § 340.14, a purely regulatory statute. Arguably, the legislature did not intend to repeal the "intoxicated" provision of the illegal sale statute even for CDA purposes; presumably, the legislature would be more willing to impose civil liability for harm caused by a criminal act than for harm caused by an act which violates a regulatory statute.

98. On the other hand, the Minnesota Supreme Court has stated that the defense of lack of guilty knowledge is unavailable to a defendant in a CDA action. See *Adamson v. Dougherty*, 248 Minn. 535, 542, 81 N.W.2d 110, 114-15 (1957). However, where the defendant *actually sees* the purchaser, he may validly defend on the ground that the purchaser did not

It is clear that for one legislative enactment to repeal a prior act which it does not expressly revoke, it must appear that the latter provision is clearly in conflict with the former. If by any reasonable construction the language of both statutes can be given effect, that construction must be adopted.<sup>99</sup> The *Strand* court could have construed the two statutes to provide a test of "intoxication" even by relying on the hours of sale statute. The hours of sale statute, in addition to proscribing sales to "obviously intoxicated" persons, provides that a sale is illegal if made to "any of the persons to whom sale is prohibited by statute . . . ."<sup>100</sup> Apparently, the legislature intended to tacitly incorporate the provisions of the illegal sale statute into the hours of sale statute, and did not intend that the "obviously intoxicated" provision of the hours of sale statute should overrule the "intoxicated" provision of the illegal sale statute for purposes of determining what constitutes an illegal transfer. In addition, both the illegal sale statute and the hours of sale statute have a separate area of operation. The illegal sale statute was enacted to specifically enumerate those persons to whom *any* furnishing of liquor is illegal. The hours of sale statute was enacted to prescribe regulations for dramshops during their hours of sale. Where the issue to be decided is whether there has been an illegal transfer, as in a CDA case, the terms of the illegal sale statute should be controlling. Moreover, the court should have reached this result in light of relevant policy considerations. The plaintiff's difficult burden of proof under the "obvious intoxication" requirement, the compensatory objectives of the CDA and the underlying penal characteristics of the CDA all indicate that a trans-

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appear to be intoxicated to the defendant at the time of the sale. In this instance, no distinction exists between this valid defense and the defense of lack of guilty knowledge. If the defendant were not allowed to defend on the ground that the purchaser did not appear to be intoxicated to the defendant, the court would, in effect, be substituting a test of "intoxication" for the announced test of "obvious intoxication" to determine CDA liability. Therefore, the statement that the defense of lack of guilty knowledge is unavailable to a defendant in a CDA action is not applicable to this situation, but only where the defendant "should see" that the purchaser is intoxicated.

99. The court has stated:

It is a rule well founded in reason, as well as authority, that to give an act not clearly intended as a substitute for another the effect of repealing it, the implication of an intent to repeal must be disclosed by a repugnancy between its provisions and those of the earlier law, so positive as to be irreconcilable by any fair, strict, or liberal construction thereof, which would, without destroying its manifest intent and meaning, find for it a reasonable field of operation . . . .  
State v. Archibald, 43 Minn. 328, 330, 45 N.W. 606, 607 (1890).

100. MINN. STAT. 340.14(1) (1957).

fer of liquor to an "intoxicated" individual should be illegal for CDA purposes.

#### B. WHAT CONSTITUTES "INTOXICATING LIQUOR"

In *Beck v. Groe*,<sup>101</sup> the Minnesota Supreme Court determined that 3.2% beer was not an "intoxicating liquor" within the meaning of the CDA. The court reasoned that the legislature intended to classify 3.2% beer as a non-intoxicant since they had enacted a separate law for the regulation of 3.2% beer in addition to the Liquor Control Act containing the CDA.<sup>102</sup> The Liquor Control Act defines "intoxicating malt liquor" as any liquor containing in excess of 3.2% alcohol.<sup>103</sup> The court, therefore, was compelled to exclude 3.2% beer from the statutory class of intoxicating liquor for CDA purposes regardless of opposing policy considerations. There is no apparent reason to draw a distinction between a liquor dealer who "caused the intoxication" by serving 3.2% beer and one who caused intoxication by selling other alcoholic liquor. Judicial notice has been taken elsewhere of the fact that beer is an alcoholic liquor capable of causing intoxication, and that all alcoholic liquors are intoxicating to some degree.<sup>104</sup> To eliminate this unwarranted distinction, the legislature should amend the CDA to provide for the imposition of liability where there is an illegal transfer of "alcoholic" liquor. Liability should be predicated upon the illegal transfer of any intoxicating-in-fact liquor rather than the type of liquor transferred.

#### C. WHAT CONSTITUTES "INTOXICATION"

In all CDA cases, the trial court must instruct the jury as to what constitutes intoxication. Wholly apart from the establishment of an "illegal" transfer of liquor, the plaintiff must establish that the injury was caused "by any intoxicated person or by the intoxication of any person."<sup>105</sup> The problem of defining intoxication is extremely difficult<sup>106</sup> because the internal reactions of two individuals to the same amount of liquor may vary.<sup>107</sup> Intoxication

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101. 245 Minn. 28, 70 N.W.2d 886 (1955).

102. *Id.* at 41-42, 70 N.W.2d at 895-96.

103. More precisely, intoxicating malt liquor is defined as "any liquor capable of being used for beverage purposes and which is produced wholly or in part from brewing of any grain . . . containing in excess of 3.2 percent of alcohol by weight." MINN. STAT. § 340.401(2) (1957).

104. See *Osborn v. Leuffgen*, 381 Ill. 295, 298, 45 N.E.2d 622, 624 (1942).

105. MINN. STAT. § 340.95 (1957). See text accompanying note 6 *supra*.

106. See *Strand v. Village of Watson*, 245 Minn. 414, 421, 72 N.W.2d 609, 615 (1955).

107. See *McCoid, Intoxication and its Effects upon Civil Responsibility*, 42 IOWA L. REV. 38, 45-46 (1956).

in the non-legal sense has been generally defined as being "under the influence of an intoxicating liquor or drug,"<sup>108</sup> or as "[having] drunk intoxicating liquor to such an extent that effects steady self-control."<sup>109</sup> For purposes of determining what constitutes intoxication under the CDA, the Minnesota Supreme Court in *Strand v. Village of Watson*<sup>110</sup> adopted the following definition:

When any person from the use of intoxicating liquors has affected his reason or his faculties, or has rendered himself incoherent of speech or has caused himself to lose control in any manner to any extent of the actions or motions of his person or body, such person in the contemplation of the law is intoxicated.<sup>111</sup>

Although the standard of intoxication thus defined is liberal—a minimal effect of liquor upon an individual will constitute intoxication<sup>112</sup>—the ultimate question of intoxication is for the jury. Thus, the finding of intoxication may vary from case to case with the quantum of proof presented.

### 1. Is "under the influence" equivalent to "intoxication"

A corresponding interpretive problem exists where the phrase "under the influence" is used in place of the statutory term "intoxication." Two issues arise: first, whether testimony that the allegedly intoxicated individual was "under the influence" of liquor is equivalent to testimony that the individual was intoxicated; and second, whether a trial court jury instruction that the allegedly intoxicated person must be "obviously under the influence" of liquor before CDA liability may be imposed constitutes reversible error.

In the CDA case of *Hahn v. City of Ortonville*, observations by witnesses that the intoxicated person was "under the influence" of liquor and "not like himself" supported a finding of intoxication.<sup>113</sup> In a subsequent CDA case, *Strand v. Village of Watson*, the trial court instructed the jury that a defendant was liable under the CDA where the allegedly intoxicated person was "under the influence" of liquor.<sup>114</sup> On appeal, the Minnesota Supreme Court

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108. WEBSTER, NEW INTERNATIONAL DICTIONARY 1302 (2d ed. unabridged, 1959).

109. 5 OXFORD ENGLISH DICTIONARY 691 (1901).

110. 245 Minn. 414, 72 N.W.2d 609 (1955).

111. *Strand v. Village of Watson*, 245 Minn. 414, 422-23, 72 N.W.2d 609, 615 (1955).

112. See McCoid, *supra* note 107, at 45-46. Professor McCoid advances the theory that in determining the relation of intoxication to civil responsibility, the minimal effect of liquor upon an individual is that which materially impairs that person's nervous reactions and muscular control.

113. See *Hahn v. City of Ortonville*, 238 Minn. 428, 431, 57 N.W.2d 254, 258 (1953).

114. *Strand v. Village of Watson*, 245 Minn. 414, 72 N.W.2d 609 (1955).

held that the instruction constituted reversible error because the jury might have concluded that proof that the purchaser was "under the influence" of liquor was sufficient to impose CDA liability.<sup>115</sup> The court stated as the basis for its decision that the trial court had failed to distinguish the "quantum of proof" necessary in a CDA action from that necessary in an action under the state traffic laws.<sup>116</sup> In a CDA action, proof of intoxication must be supplemented by proof that the intoxication was "obvious" to the seller. In an action under the state traffic laws, where the statutory test of guilt is "under the influence of liquor," only evidence of inebriation is required. However, in *Hartwig v. The Loyal Order of Moose*,<sup>117</sup> a CDA action, the court seems to have misinterpreted the *Strand* opinion as proposing that an "intoxicated" individual is affected by liquor to a *greater degree* than one who is "under the influence."<sup>118</sup> On the issue of jury instruction, the court, relying on the *Strand* opinion, stated that the definition of the statutory term "intoxication" should be limited to that term, and any explanation of the phrase "under the influence" should be avoided unless it becomes necessary at some time before the verdict is rendered "to explain to the jury the difference in the application of those terms."<sup>119</sup> Moreover, the *Hartwig* opinion implied that evidence of an individual's being "under the influence" should be given less probative value than evidence of intoxication in a CDA action.<sup>120</sup> This interpretation of the *Strand* case is not supported by the language of the *Strand* opinion. In *Strand*, the trial court was reversed not because it had instructed the jury in terms of "under the influence" rather than "intoxication," but because the instruction given neglected to state that there must be an outward manifestation of the intoxication to create CDA liability.<sup>121</sup> In addition, on the issue of the probative value of evidence, the court

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115. *Id.* at 422, 72 N.W.2d at 615.

116. *Id.* at 424, 72 N.W.2d at 616-17. See MINN. STAT. § 169.121 (1957).

117. 253 Minn. 347, 91 N.W.2d 794 (1958).

118. The court stated: "The best that can be said from the testimony here is that there is some evidence that Hellen was intoxicated at the time of the accident and not merely under the influence of intoxicating liquor." *Id.* at 364, 91 N.W.2d at 806.

119. *Id.* at 363, 91 N.W.2d at 806.

120. In *Hartwig*, the court stated that care should be exercised in that respect concerning the reception of evidence. 253 Minn. at 364, 91 N.W.2d at 806.

121. See notes 111-12 *supra* and accompanying text. The court in *Hartwig* apparently thought that the *Strand* decision justified this conclusion since in *Hartwig* the court remarked: "Both the *Strand* case and the *Adamson* case chart the procedural course under the Civil Damages Act." 253 Minn. at 364, 91 N.W.2d at 806.

in *Strand* emphasized the non-existence of a significant distinction between the concepts of "under the influence" and of "intoxication."<sup>122</sup> In light of the all-inclusive definition of the term "intoxication" that has been adopted by the court in CDA actions, it is doubtful that the phrase "under the influence" *could* be used to denote a lesser degree of drunkenness. Therefore, in keeping with the *Strand* opinion, any instruction to the jury that CDA liability may exist wherever the allegedly intoxicated person is "under the influence" of liquor should be deemed proper if the jury is also instructed that this fact must be "obvious" to the seller. Similarly, testimony by a witness that an individual was "under the influence" of intoxicants should be deemed equivalent to testimony that the individual was "intoxicated" when offered in a CDA action.

## 2. *The requirement of obvious intoxication*

The "obvious intoxication" requirement of the hours of sale statute is fulfilled if the defendant, through his reasonable powers of observation, "sees or should see" that the purchaser is intoxicated at the time of the transfer.<sup>123</sup> Theoretically, this requirement makes it difficult for the plaintiff to establish that there has been an illegal transfer by the defendant.<sup>124</sup> The purchaser's intoxication must necessarily be determined by his demeanor, conduct, actions, and appearance as observed by witnesses, as well as by mechanical tests.<sup>125</sup> Frequently, in a commercial setting, these witnesses will include either the defendant or his employees who served the liquor and the defendant's regular customers. The possibility of the plaintiff having similarly favorable witnesses is less likely. Moreover, under the obvious intoxication test, testimony of the witnesses observing the allegedly intoxicated person will be given greater probative weight than evidence of intoxication obtained by mechanical tests.

Generally, a mechanical test—a blood test or urinalysis—which tends to show intoxication at the time of the injury, and to a lesser degree intoxication at the time of the transfer, will be introduced by the plaintiff in a CDA action. However, this evidence does not have the probative value that it has in a non-CDA case where only

122. See *Strand v. Village of Watson*, 245 Minn. 414, 422, 72 N.W.2d 609, 615 (1955).

123. *Strand v. Village of Watson*, 245 Minn. 414, 422, 72 N.W.2d 609, 615 (1955).

124. See *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 91 N.W.2d 794 (1958).

125. See *Strand v. Village of Watson*, 245 Minn. 414, 423, 72 N.W.2d 609, 616 (1955); *Moran, Theories of Liability*, 1958 U. ILL. L.F. 191, 197.



actual intoxication need be established. In a CDA action these tests are always conducted after the injury and are, therefore, only circumstantial evidence of the purchaser's obvious intoxication at the time of the transfer. The weakness of the plaintiff's evidence in this situation stems from the fact that the jury must draw three inferences from the test results: first, that the alcoholic content found in the system of the individual was sufficient to cause his intoxication;<sup>126</sup> second, that the purchaser was actually intoxicated when served by the defendant; and third, that the intoxication was obvious to the defendant. The seller could testify without contradiction that at the time he observed the intoxicated person, there was no manifestation of intoxication. On the other hand, the defendant may use the favorable results of mechanical tests taken after the injury to greater advantage than the plaintiff since the defendant need only establish that the person causing the injury was not in fact intoxicated at the time of the transfer.

Arguably, a transfer of liquor should be illegal within the meaning of the CDA if the liquor is transferred to an intoxicated person. The effect of eliminating the "obvious intoxication" requirement would be to increase the liquor dealer's burden of further inquiry into the possibility of the purchaser's intoxication at the time of the transfer and to reduce the difficulty of plaintiff's proof. Thus, the compensatory objectives of the act would be achieved to a greater extent. However, the jury has recognized the plaintiff's difficulty and accordingly has placed greater probative value on circumstantial evidence of intoxication introduced by the plaintiff.<sup>127</sup>

#### D. DESIRABILITY OF AN ILLEGAL TRANSFER CLAUSE

Absent an illegal sale requirement, strict liability would be imposed on the liquor dealer for injury caused by any intoxicated person or by the intoxication of any person to whom he had sold

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126. McCORMICK, EVIDENCE 375-77 (1954).

127. In *Ritter v. Village of Appleton*, 254 Minn. 30, 93 N.W.2d 683 (1958), the defendant's bartender testified that he remembered serving the intoxicated person, that he observed him, that the allegedly intoxicated person talked normally, walked naturally, had steady hands, and that, in the opinion of the bartender, he was not intoxicated. Record, pp. 187-92, *Ritter v. Village of Appleton*, 254 Minn. 30, 93 N.W.2d 683 (1958). Several other witnesses expressed contradictory views on the issue of whether the person was intoxicated. The jury apparently ignored the testimony of the bartender that the purchaser was not "obviously intoxicated" at the time of the sale and found in favor of the plaintiff. The Minnesota Supreme Court affirmed, holding that the total evidence introduced was sufficient to sustain a finding that intoxication was "obvious" to the seller.

liquor. Liability could be imposed on a person who only sold the intoxicant his first drink in a series of drinks which resulted in intoxication since any degree of contribution to the intoxication, no matter how slight, would be sufficient to create CDA liability.<sup>128</sup> The imposition of liability under any Civil Damage Act which does not contain an illegal transfer requirement is undesirable because the seller of the first drink may be liable for his purchaser's subsequent actions. Moreover, a liquor dealer who serves an individual his first drink has no ability to implead others who may have served the same individual subsequent to the time that the individual became intoxicated.<sup>129</sup> Furthermore, the illegal sale requirement may deter liquor dealers from selling to intoxicated persons, whereas, in the absence of an illegal sale requirement, the liquor dealer may be inclined to sell liquor to both intoxicated and non-intoxicated individuals.<sup>130</sup>

### III. THE REQUIREMENT OF CAUSATION

#### A. THE CAUSE OF INTOXICATION

Since the CDA provides that liability will attach only if the defendant "*caused* the intoxication" of the allegedly intoxicated per-

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128. See ILL. REV. STAT. ch. 43, § 135 (1957), which does not require an illegal sale on the part of the liquor dealer to impose liability.

129. See text accompanying notes 74-76 *supra*.

130. In addition, the absence of the "illegal transfer" requirement may raise a serious constitutional problem. It has long been recognized that a state may constitutionally enact a CDA under its police power in order to prevent the potential damage likely to follow from liquor traffic. See *Eiger v. Garrity*, 246 U.S. 97, 103 (1918). It is equally well recognized that any arbitrary or unreasonable exercise of the state's police power may be declared unconstitutional as a violation of the fourteenth amendment. See *Gitlow v. New York*, 268 U.S. 652, 668-70 (1924). However, the precise question concerning the constitutionality of the CDA provision which makes each liquor dealer liable for damages caused by an intoxicated person—even if that person was not intoxicated when served by the dealer—has not been raised.

The holding of the Court in *Eiger v. Garrity*, *supra*, concerned only that part of the statute which regulates the right to rent property for the sale of intoxicating liquor by making the premises so used subject to a lien for judgment for damages because of the deprivation of means of support of the wife resulting from the intoxication of the husband. 246 U.S. at 103. Arguably, the ultimate purpose of exercising the police power by means of a CDA is to prevent the sale of liquor to an intoxicated person. See text accompanying note 7 *supra*. A CDA statute with an illegal sale requirement which prohibits sale of liquor to an intoxicated person achieves this objective. If a CDA statute has no illegal sale restriction—imposes liability upon a dealer for injuries resulting from a sale to *any* individual—it would diminish liquor traffic to intoxicated individuals only to the same extent as a CDA which restricts liability to that resulting from a sale to an intoxicated person. See *Samuels v. McCurdy*, 267 U.S. 188, 194-95 (1925).

son,<sup>131</sup> it is a seemingly anomalous requirement that the defendant's transfer must be shown to have been to one who is already "obviously intoxicated."<sup>132</sup> The Minnesota Supreme Court has resolved this problem by requiring not that the liquor transferred by the dealer be the sole cause of the intoxication, but by merely requiring that it be a cooperating, concurring or proximately contributing cause.<sup>133</sup> Liquor served to an individual after he is "obviously intoxicated" may be a contributing cause of the individual's intoxication. However, it must be established that there has been an illegal sale—for example, to one obviously intoxicated—before the causal standard is applicable.<sup>134</sup> This effectively precludes liability from being imposed on a liquor dealer who serves liquor to an adult person prior to that person's intoxication, even though the liquor was a substantial cause-in-fact of the subsequent intoxication. Conversely, the degree of contribution to the intoxication necessary to impose CDA liability upon a dealer who serves liquor to an individual who is obviously intoxicated would

(the state must adopt only "reasonably appropriate or needful" measures). Moreover, a CDA with no illegal sale requirement might not diminish liquor traffic to any degree, since—because the CDA draws no distinction between a sale to an intoxicated person and a non-intoxicated person—the liquor dealer may be inclined to sell liquor to *both* the intoxicated and the non-intoxicated individuals. It can be argued from these facts that a statute which omits the "illegal transfer" requirement is both arbitrary, because it imposes liability to a greater extent than necessary to achieve its preventative objectives, and unreasonable, because it may not effectively achieve these objectives. Therefore, a CDA which does not contain an "illegal" sale prerequisite might be deemed unconstitutional. *Cf.* Note, 4 VILL. L. REV. 575, 580–81 (1959).

131. MINN. STAT. § 340.95 (1957).

132. See text accompanying note 97 *supra*.

133. See *Hahn v. City of Ortonville*, 238 Minn. 428, 432, 57 N.W.2d 254, 258–59 (1953). It should be emphasized that the causation standard in the *Hahn* case referred only to the cause of the intoxication by the illegal sale, not the cause of the ultimate injury. See *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 363, 91 N.W.2d 794, 806 (1958). Thus the Minnesota Supreme Court in *Randall v. Village of Excelsior*, 258 Minn. 81, 103 N.W.2d 131 (1960), may have misapplied this standard when it stated:

By the Civil Damage Act the legislature abrogated the common-law requirement of proximate cause so that the person protected by its provisions is no longer required to establish that the illegal sale to the wrongdoer is the sole cause of the intoxication. It is enough *if the intoxication* is a cooperating, concurring, or proximately contributing cause. . . .

(Emphasis added.) It is fairly inferable from this language that the court shifted the standard from the degree of intoxication required to "cause" intoxication to the degree of intoxication required to "cause" the injury under the CDA. Nevertheless, the causation requirement thus mistakenly applied by the *Randall* opinion may be the law in Minnesota. *Id.* at 84, 103 N.W.2d at 134.

134. See text accompanying note 89 *supra*.

apparently be minimal under the announced causation test. For example, liability *may* be imposed upon a liquor dealer who served only one drink to an obviously intoxicated person. This result is difficult to justify in terms of causation; nevertheless, it is an effective means of restricting the sale of liquor to persons who are intoxicated.

## B. CAUSE OF THE INJURY

The Minnesota CDA also provides that liability will be imposed only if the injury is *caused* "by any intoxicated person, or by the intoxication of any person."<sup>135</sup> This statutory language does not expressly delimit the causal relation between the intoxication and the injury which must be established to create CDA liability. The Illinois courts, in construing a similar statute, have distinguished a cause of action where the injury is caused by "any intoxicated person" (under the person clause) from a cause of action where the injury is caused by "the intoxication of any person" (under the intoxication clause).<sup>136</sup> However, the Minnesota Supreme Court has not expressly drawn this distinction. Thus, a further question is presented: whether the concept of causation applied in Minnesota CDA suits is the same where the injury is caused by "any intoxicated person" as where the injury is caused by "the intoxication of any person."<sup>137</sup>

### 1. Causation under the "person" clause in other jurisdictions

An injury comes within the language of the "person" clause when an intoxicated individual commits a direct, affirmative act which causes injury to the plaintiff. Where the intoxicated person commits suicide, his dependents may bring a CDA action under the "person" clause for loss of means of support.<sup>138</sup> The courts have stated that the CDA creates a presumption that an act done to the injury of his family by a person whose faculties are abnormally excited or confused is the result of his intoxication.<sup>139</sup> A cause of action may also arise under the "person" clause where, for

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135. MINN. STAT. § 340.95 (1957).

136. See *Cox v. Hrasky*, 318 Ill. App. 287, 47 N.E.2d 728 (1943); *Danhof v. Osborne*, 11 Ill. 2d 77, 142 N.E.2d 20 (1957).

137. See Appleman, *Pleading, Evidence and Procedure Under The Dram Shop Act*, 1958 U. ILL. L.F. 219, 226-27 (discussion of the Illinois Civil Damage Act). Mr. Appleman terms the distinction between the two clauses "a bastard rule which has evolved in the law without much justification, but is now widely recognized for the purpose of confusing amateurs in this field." *Id.* at 227. See also Note, *Liability Under The New York Dram-shop Act*, 8 SYRACUSE L. REV. 252, 255-56 (1957).

138. See, e.g., *Bistline v. Ney Bros.*, 134 Iowa 172, 111 N.W. 422 (1907).

139. *Id.* at 179, 111 N.W. at 424.

example, the intoxicate either assaults the plaintiff<sup>140</sup> or drives his automobile into the plaintiff's.<sup>141</sup> In any of these situations the plaintiff is not required to prove that the intoxicate's act was the proximate cause of the plaintiff's injury.<sup>142</sup> It has been suggested, however, that only the *tortious* act of an intoxicated person will permit the plaintiff to initiate a CDA action under the "person" clause.<sup>143</sup> Apparently, the only causal relationship between the intoxication and the injury which must be established under the "person" clause is that the intoxication was at least a remote cause of the injury.<sup>144</sup>

## 2. Causation under the "intoxication" clause in other jurisdictions

An injury comes within the language of the "intoxication" clause when the intoxicated person commits no affirmative injury-causing act other than his consumption of liquor. Among the injuries which are covered by this clause are incapacity of the intoxicated person resulting from habitual drunkenness, insanity of the intoxicated person caused by intoxication, and death of the intoxicated person caused by intoxication.<sup>145</sup> A cause of action under this clause will usually be brought by the dependents of the intoxicate for loss of means of support. However, unlike actions under the "person" clause, the "intoxication" must be the "proximate cause" of the injury where the action is under the "intoxication" clause.<sup>146</sup> The proximate cause test applicable in CDA actions is the same as the causal test used to determine liability in negligence actions.<sup>147</sup> Consequently, the defendant in a CDA action may validly defend by proving an intervening, superseding cause.<sup>148</sup>

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140. See Moran, *Theories of Liability*, 1958 U. ILL. L.F. 191, 200.

141. *E.g.*, Bejnarowicz v. Bakos, 332 Ill. App. 151, 74 N.E.2d 614 (1947).

142. See, *e.g.*, Hocker v. O'Klock, 16 Ill. App. 2d 414, 148 N.E.2d 618 (1958).

143. Hill v. Alexander, 321 Ill. App. 406, 427, 53 N.E.2d 307, 316 (1944).

144. See Danhof v. Osborne, 11 Ill. 2d 77, 142 N.E.2d 20 (1957).

145. See Moran, *Theories of Liability*, 1958 U. ILL. L.F. 191, 200.

146. See, *e.g.*, Danhof v. Osborne, 11 Ill. 2d 77, 142 N.E.2d 20 (1957).

147. One writer has observed:

Some lawyers and judges believe that a different set of rules relating to causation apply in dram shop cases as distinguished from those applicable in negligence cases.

The cases do not substantiate this belief.

The dram shop cases are replete with formulations of the general rules for determining what constitutes a proximate cause. In each case the inquiry is whether the injury was the natural and probable consequence of the intoxication. This is similar to the standard of inquiry in negligence cases, where the question is whether the injury was the natural and probable consequence of the negligence.

Moran, *Theories of Liability*, 1958 U. ILL. L.F. 191, 201.

148. *Ibid.*

### 3. Causation in Minnesota

The Minnesota Supreme Court has not expressly drawn any distinction between actions based on the affirmative injury-causing act of the intoxicate and actions based on injury resulting from the mere overconsumption of alcohol. The court has, however, suggested that there may be a distinction between the requisite causal relationship where the injury is caused "by any intoxicated person" and where the injury is inflicted "by the intoxication of any person." In *Sworski v. Colman*<sup>149</sup>—a CDA case which would be classified under the "person" clause in other jurisdictions—the intoxicated person was placed in jail and found dead seven and one-half hours later. The defendant contended that the decedent had committed suicide and, therefore, that no liability could be imposed since the intoxication was not the proximate cause of the injury. The court refused to accept this argument on the ground that even if the decedent had committed suicide it would not be necessary to show that the intoxication was the proximate cause of the injury.<sup>150</sup> Apparently, the court thereby intended to distinguish the causal requirement of the "intoxication" clause from that of the "person" clause in a manner similar to other jurisdictions.<sup>151</sup> Later Minnesota Supreme Court decisions have ignored this distinction and have stated that proximate cause is an essential element of the plaintiff's case in *all* CDA actions.<sup>152</sup> Never-

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149. 208 Minn. 43, 293 N.W. 297 (1940).

150. *Sworski v. Colman*, 208 Minn. 43, 50, 293 N.W. 297, 300 (1940).

151. *Cavin v. Smith*, 228 Minn. 322, 37 N.W.2d 368 (1949), was a subsequent case which presented a fact situation within the "intoxication" theory. Plaintiff was a minor who became intoxicated in the defendant's tavern as a result of drinking intoxicating liquor illegally sold to him. He brought an action for damages inflicted on him by a third party's assault, because he was unable to defend himself by reason of his intoxicated condition. The defendants moved for a directed verdict on the ground, *inter alia*, that plaintiff failed to establish a proximate cause relationship between the illegal sale and the resulting injury. Record, pp. 63-64. The trial court directed a verdict of six cents for the plaintiff. *Id.* at 64-65. The plaintiff appealed, but the Minnesota Supreme Court affirmed the action of the trial court solely on the ground that a person who becomes voluntarily intoxicated has no cause of action against the dealer who illegally sold the liquor. The Minnesota Supreme Court did not consider the question of proximate cause in this case.

152. See *Hartwig v. The Loyal Order of Moose*, 253 Minn. 347, 356, 91 N.W.2d 794, 801 (1958), where the court stated:

It is elementary that before plaintiffs are entitled to recover in these cases they must show by competent proof that defendants . . . unlawfully furnished intoxicating liquor to Emil Hellen . . . and that the same was a proximate cause of the injuries to Lee Hartwig which resulted in his death.

Moreover, the proximate cause requirement in a CDA action is apparently the same as that of a negligence action. In *Ritter v. Village of Appleton*,

theless, the results reached under the Minnesota proximate cause requirement are generally consistent with those reached in other jurisdictions. This stems from the fact that the requirement of wrongdoing under the "person" clause in other jurisdictions serves a function similar to the requirement of proximate cause—that is, it defines the requisite legal relationship between the act of the intoxicated person and the resulting injury.

### CONCLUSION

Since the policy objectives of the CDA are to compensate persons injured by an intoxicated person, to regulate the sale of intoxicating liquor, and to penalize anyone who illegally furnishes liquor, it is apparent that some changes are necessary to repair deficiencies in the Minnesota CDA and fully effectuate these policy objectives. The most important changes which should be made by the legislature are the amendment of the act to provide for liability upon the furnishing of "alcoholic liquors" rather than "intoxicating liquors" and the elimination of the statutory requirement that the CDA action be brought by the injured party "in his own name." Furthermore, the legislature should clarify the existing statutes relating to the "obviously intoxicated" requirement so that the courts can find that transfer to an "intoxicated" person is "illegal" for CDA purposes.

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254 Minn. 30, 93 N.W.2d 683 (1958), a Civil Damage Act suit, the trial court instructed the jury as follows:

. . . "Was the intoxication of Henry Hanson a proximate cause of the collision and the resulting damages?" You will answer that question "yes" or "no." It is not necessary that the illegal sale and the intoxication of . . . Henry Hanson was the sole proximate cause of the collision and injuries, but it must be a contributing cause. When we speak of proximate cause, we mean that which causes it directly and immediately.  
Record, p. 304.

In *Shastrid v. Shue*, 247 Minn. 314, 77 N.W.2d 273 (1956), a negligence action, the trial court instructed the jury: "Proximate cause simply means the direct or immediate cause." Record, p. 382.